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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 A.J.P. and A.M.P., minors, by and
13 through their guardian *ad litem*
14 Cynthia Nunez, individually and as
15 successor in interest to Albert Perez,
deceased; and PATRICIA RUIZ,
individually,

16 Plaintiffs,

17 vs.

18 COUNTY OF SAN BERNARDINO;
19 CORY MCCARTHY; ANDREW
POLLOCK; DAVID MOORE; and
CHRISTINA OLIVAS,

20 Defendants.
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Case No. 5:22-cv-01291-SSS-SHK
Hon. Sunshine S. Sykes

UNOPPOSED *EX PARTE*
APPLICATION FOR APPROVAL OF
THE COMPROMISE OF THE
CLAIMS OF MINOR PLAINTIFFS
A.J.P., A.M.P.; VERIFICATION BY
CYNTHIA NUNEZ

[Declaration of Shannon J. Leap and
exhibits attached thereto, Declaration of
Dale K. Galipo; Declaration of Melissa
Baldwin; Verification by Cynthia Nunez;
Proposed Order and *filed concurrently*
herewith]

**TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT Plaintiffs A.M.P. and A.J.P., by and through their guardian *ad litem*, Cynthia Nunez, individually and as a successor in interest to Albert Perez, deceased, hereby moves this Court by way of this unopposed *Ex Parte* Application for Approval of Compromise of the Claims of Minor Plaintiffs A.M.P. and A.J.P. (“Application”) for an order approving the settlement of their claims and distribution of her settlement funds. Plaintiffs A.J.P. and A.M.P. (“Minor Plaintiffs”) and their guardian *ad litem*, Petitioner Cynthia Nunez, make this Application pursuant to Central District Local Rule 7-19. The grounds for this Application are set forth in the Memorandum of Points and Authorities, which follows below, the Declaration of Shannon J. Leap (“Leap Decl.”), the Declaration of Dale K. Galipo (“Galipo Decl.”), and the Declaration of Melissa Baldwin (“Baldwin Decl.”) which are submitted concurrently herewith.

Prior to filing this *ex parte* application, Plaintiffs A.M.P. and A.J.P.’s counsel Shannon J. Leap contacted Defendants’ counsel to confirm that Defendants will not be opposing the instant Application. Defendants are represented by Eugene P. Ramirez, Lynn Carpenter, and Kayleigh Andersen of Manning & Kass, Ellrod, Ramirez, Trester, 801 S Figueroa St 15th Floor, Los Angeles, CA 90017. Leap Decl. at ¶ 2. Defendants and their counsel do not oppose the filing of this Application on an *ex parte* basis, nor do Defendants and their counsel oppose the substance of this Application. Leap Decl. at ¶ 3.

This Application seeks approval of the compromise of the Minor Plaintiffs’ claims on an *ex parte* basis because A.M.P. and A.J.P.’s guardian *ad litem*, after consulting with an annuity broker, vetting insurance companies, reviewing proposed annuity plans, and (through counsel) meeting and conferring with respect to this motion has chosen an annuity the interest rate for which is likely to expire if this petition is heard as a regularly noticed motion. The annuity interest rates expire on

1 September 10, 2024. Additionally, it can take up to 21 days for the County to
2 purchase the annuities following the Court issuing an order. Leap Decl. at ¶ 4.
3 However, the Securities Broker requires the order to be issued 30 days prior to the
4 expiration date, which would be August 10, 2024. *See* Baldwin Decl. at ¶ 4. For that
5 reason, filing this Application as a regularly noticed motion may cause a decrease in
6 payment benefits to the minor plaintiffs because the secured interest rates may
7 expire in the time it takes for an order to be issued, and for the County to
8 subsequently purchase the annuities. Leap Decl. at ¶ 4; Baldwin Decl. at ¶ 5.

9 If review of the application is not expedited and exceeds the funding deadline
10 of September 10, 2024, the rates and annuity payments will expire. Baldwin Decl. at
11 ¶ 6. No rate extensions are possible and the delay in funding will negatively affect
12 the Minors payments. Baldwin Decl. at ¶ 6. Failure to approve prior to the deadline
13 would decrease the interest rates, lessen the annuity payments, and decrease of
14 guaranteed return of the structured annuity benefits to the Minors as rates have
15 changed since originally locked in and Secured. Baldwin Decl. at ¶ 6.

16 Additionally, Plaintiffs have not caused this crisis themselves. The need for *ex*
17 *parte* relief stems from the duration for which the interest rates on the annuity
18 packages are secured. Filing this petition as a regularly noticed motion risks delay in
19 the Court's ruling, issuing the order, and shrinking the time necessary for the
20 County to purchase the annuities from the life insurance company prior to the
21 expiration date. Leap Decl. at ¶ 4

22 Plaintiffs acted diligently following the settlement's approval on May 21, 2024.
23 At that time, the Law Offices of Dale K. Galipo finalized the costs in the case.
24 Additionally, because the different Plaintiffs have different standing for the different
25 legal claims they may bring in the case, and different damages they may seek based
26 on their claims, Plaintiffs needed to agree upon a fair and appropriate disbursement
27 based on these different claims. The agreed upon gross distribution of the
28 \$4,750,000 was as follows: Plaintiff A.J.P. to receive a gross amount of \$1,750,000;

1 Plaintiff A.M.P. to receive a gross amount of \$1,750,000; and Plaintiff Patricia Ruiz
2 to receive a gross amount of \$1,250,000. Leap Decl. at ¶ 4.

3 Once this disbursement was agreed upon and finalized, on June 4, 2024,
4 Attorney for Plaintiffs, Shannon Leap calculated the pro-rata share of costs and
5 attorneys' fees to be deducted from each Plaintiffs' portion of the gross settlement,
6 in accordance with the signed retainer agreement. Leap Decl. at ¶ 4. On June 5,
7 2024, Ms. Leap notified settlement annuities broker, Ms. Melissa Baldwin of the
8 resulting net amount for minor Plaintiff A.J.P. and A.M.P. of \$1,031,346.07, each.
9 Leap Decl. at ¶ 4. On June 7, 2024, Ms. Baldwin sent four proposed annuities for
10 A.J.P. and A.M.P., which guardian ad litem, Ms. Cynthia Nunez, needed to review
11 to select the annuity breakdown in the best interests of each A.J.P. and A.M.P.,
12 respectively. On June 12, 2024, Ms. Nunez confirmed the proposed annuity
13 structures that she believed would be in the best interests of A.J.P. and A.M.P.,
14 respectively. Leap Decl. at ¶ 4. On June 17, 2024, Ms. Baldwin informed Ms. Leap
15 that the interest rates for the selected annuities were finalized and that the rates
16 would expire on September 10, 2024. Leap Decl. at ¶ 4. Finally, lead trial counsel,
17 Dale K. Galipo, was in trial out of state for two weeks and was unable to review the
18 final draft of the instant petition until his return to the office the week of July 1,
19 2024. Leap Decl. at ¶ 4; Galipo Decl. at ¶ 16. Importantly, Plaintiffs have no control
20 over the time period or duration for which the rates are secured.

21 For the last approximately five years, the Law Offices of Dale K. Galipo has
22 requested court approval through *ex parte* applications, because the structured
23 annuities have interest rates that expire anywhere from 60-90 days after they are
24 secured. Galipo Decl. at ¶ 3. Additionally, courts and opposing counsel have agreed
25 to hearing the unopposed minor's compromise heard on an *ex parte* basis for
26 judicial efficiency purposes. Galipo Decl. at ¶ 3. Often, District Courts –
27 understandably, given the Central District's uniquely high volume of cases – can
28 sometimes take longer than this period to rule on any motion if it is regularly

1 noticed, including one for a minor's compromise. Galipo Decl. at ¶ 3. Moreover, in
2 the event that a court denied the motion, Plaintiffs would likely need to re-start the
3 annuity interest rates process over again and secure new rates, because the original
4 interest rates would likely expire prior to a re-filing and new order was issued on a
5 subsequent petition for a minor's compromise. Galipo Decl. at ¶ 3. In so doing, it is
6 possible that the subsequent interest rates would decrease from the original rates.
7 Baldwin Decl. at ¶ 5. Additionally, it can take 21-30 days from the issuance of the
8 order for defendants to purchase the annuities. Galipo Decl. at ¶ 3; Baldwin Decl. at
9 ¶ 4.

10 Moreover, given that Defendants do not oppose the substance of this request
11 for approval of a minor's compromise, nor the filing of it as an *ex parte* application,
12 in an effort to reduce the burden on the Court to conduct a hearing on the matter,
13 and in the interests of efficiency due to the restrictive timeline of the annuity interest
14 rates, we filed the application on an *ex parte* basis, as we have for the approximate
15 last five years. Galipo Decl. at ¶ 4.

16 Plaintiffs apologize to the Court for filing this petition for the minors'
17 compromise on an *ex-parte* basis for what will be a third, and final time, and for any
18 inconvenience it has caused. Galipo Decl. at ¶ 5. However, given that the interest
19 rates were secured on June 17, 2024, and they will expire on September 10, 2024,
20 filing this petition as a regularly noticed motion, will result in the interest rates
21 expiring before the County would likely be able to purchase the annuities. Galipo
22 Decl. at ¶ 5; Baldwin Decl. at ¶ 5. The minor plaintiffs will suffer prejudice if
23 securing new rates is required. If Plaintiffs filed this as a regularly noticed motion,
24 the earliest date for which the motion could be noticed is August 16, 2024. If the
25 Court issued an order shortly thereafter, there would be a high risk that the County
26 of San Bernardino would not be afforded sufficient time to purchase the annuity
27 prior to the rates expiring, which can take up to 30 days. Galipo Decl. at ¶ 5.

28 Should the Court find that *ex parte* relief is not warranted here, or should

1 otherwise deny Plaintiffs' application, Plaintiffs will need to re-start the annuities
2 process and secure new rates on the annuities for their structured settlements.
3 Plaintiffs would plan to file the request for the approval of those settlement
4 structures as a regularly noticed motion, and notify the Court of the limitations of
5 the timeline. Galipo Decl. at ¶ 6.

6 Accordingly, Petitioner Cynthia Nunez as guardian *ad litem* for minor plaintiffs
7 A.M.P. and A.J.P. respectfully request that this Court consider this Application on
8 an *ex parte* basis. Leap Decl. at ¶ 4.

9
10 DATED: July 18, 2024

LAW OFFICES OF DALE K. GALIPO

11
12 /s/ Shannon J. Leap

13 Dale K. Galipo

14 Shannon J. Leap

15 *Attorneys for Plaintiffs A.M.P. and A.J.P.*
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UNOPPOSED EX PARTE APPLICATION FOR APPROVAL OF
COMPROMISE OF THE CLAIMS OF MINOR PLAINTIFFS A.M.P. and
A.J.P.

I. INTRODUCTION

Plaintiffs A.M.P. and A.J.P., by and through their guardian *ad litem*, Cynthia Nunez, individually and as successors in interest to Albert Perez, deceased, hereby submit this *ex parte* application and proposed order for approval of the compromise of the claims of minor Plaintiffs A.M.P. and A.J.P. (“Application”), and request that this Honorable Court approve of the proposed distribution of the Minor Plaintiffs’ funds.

The instant claims of the Minor Plaintiffs arose out of the shooting of Albert Perez (“the decedent”) on August 29, 2021, by deputies working for the San Bernardino County Sheriff’s Department. Plaintiffs A.M.P. and A.J.P. are the decedent’s biological children and his lawful successors in interest. In addition to the Minor Plaintiffs, the decedent’s mother, Patricia Ruiz, is a plaintiff in this action. The parties reached a conditional settlement of \$4,750,000, subject to the County of San Bernardino Board of Supervisor’s approval. The settlement was formally approved by the proper authorities on or around May 21, 2024. The settlement agreement obligates Defendants to pay to Plaintiffs and their attorneys \$4,750,000. Leap Decl. at ¶ 5.

II. DISCUSSION

District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to safeguard the interests of litigants who are minors. Rule 17(c) provides, in relevant part, that a district court must appoint a guardian *ad litem*—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c). In the context of proposed settlements in suits involving minor plaintiffs, this special duty requires a district “court [to] conduct its own inquiry to determine whether the settlement serves the

1 best interests of the minor.” *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir.
 2 1978); *see also Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983)
 3 (holding that “a court must independently investigate and evaluate any compromise
 4 or settlement of a minor’s claims to assure itself that the minor’s interests are
 5 protected, even if the settlement has been recommended or negotiated by the
 6 minor’s parent or guardian ad litem.”).

7
 8 Although the district court has a special duty to safeguard the interests
 9 of minor plaintiffs, that duty requires only that the district court
 10 determine whether the net amount distributed to each minor plaintiff in
 11 the proposed settlement is fair and reasonable, without regard to the
 proportion of the total settlement value designated for adult co-Plaintiffs
 and contracted by them with Plaintiffs’ counsel. If the net recovery of
 each minor plaintiff under the proposed settlement is fair and reasonable,
 the district court should approve the settlement as proposed.

12 *Robidoux v. Rosengren*, 638 F.3d 1177, 1179 (9th Cir. 2011).

13
 14 In this case, a \$4,750,000 global settlement is fair and reasonable. Given that
 15 the highest plaintiff’s verdict in a wrongful death civil rights case in recent years in
 16 the Riverside Courthouse in the Central District of California is \$4,500,000. Galipo
 17 Decl. at ¶ 10. Mr. Galipo, and the Law Offices of Dale K. Galipo tried that case. *Id.*
 18 The shooting incident in that case was captured on body worn cameras, which the
 19 jury was able to view. *Id.* The Decedent in that case was also not alleged to have had
 20 a gun, as the Decedent in this case is. *Id.*

21 This case presented certain challenges that would be particularly uncertain if
 22 it proceeded to trial. *Id.* at ¶ 8. From an evidentiary perspective, there was no body
 23 camera video footage of the shooting, nor were there any percipient witnesses to the
 24 shooting incident other than the Deputies employed by Defendant County of San
 25 Bernardino. *Id.* at ¶ 8. At trial, Plaintiffs would have needed to build their case
 26 against defendants primarily on the testimony of the involved deputies, other
 27 privileged forensic evidence, and medical evidence. *Id.* at ¶ 8.

1 The facts of this case were also particularly difficult. First and foremost, the
2 Decedent in this case, Mr. Albert Perez (“Mr. Perez”) did have a gun in his hand or
3 on his person for several hours while deputies from the San Bernardino County
4 Sheriff’s Department (“SBSD”) negotiated with him to put the gun down and
5 surrender, where for several hours he refused to do so. *Id.* at ¶ 9. Mr. Perez was also
6 slow to comply with the Deputies’ commands, although he eventually did comply
7 with at least four of their commands to put the gun down, stand up from the stool,
8 walk towards the deputies at the mouth of the garage, and stop near the threshold of
9 the garage. *Id.* Moreover, on Defendants’ facts, once Mr. Perez understood he was
10 being arrested after following these commands, he quickly turned around and moved
11 toward and for the gun that he had previously laid on the ground. *Id.* Additionally,
12 on Defendants’ facts, the deployment of less-lethal rounds against Mr. Perez was
13 ineffective. *Id.* A jury could potentially find that if the decedent was going for the
14 gun he was previously holding, then the defendants had a right to use deadly force to
15 defend themselves. *Id.*

16 Settlement in this case was also advantageous for Plaintiffs from a procedural
17 perspective. *Id.* at ¶ 10. At the time of the settlement, Defendants’ Motion for
18 Summary Judgment was pending. *Id.* Plaintiffs filed their opposition as well. *Id.* It is
19 possible that if this Court denied summary judgment, Defendants would have filed
20 an interlocutory appeal to the Ninth Circuit Court of Appeals, further delaying the
21 trial or resolution of the case by at least a year. *Id.* Furthermore, there would be no
22 guarantee that Plaintiffs would prevail at trial even if the case proceeded to trial. *Id.*
23 Additionally, even if the jury returned a verdict in Plaintiffs’ favor, there is no
24 guarantee the jury would have found that Plaintiffs were entitled to damages in the
25 amount that Plaintiffs are guaranteed to receive by virtue of the settlement. *Id.* This
26 is especially true, given that among the highest plaintiff’s verdicts in a wrongful
27 death shooting case in recent years in the Federal Courthouse in Riverside in the
28 Central District of California is \$4,500,000, in the case *V.R., et al. v. County of San*

1 *Bernardino, et al.* (Case No.: 5:19-cv-01023-JGB-SP). *Id.* In that case, there were
 2 body worn camera videos and the Decedent was not armed with a gun. *Id.* Securing
 3 a settlement in this case for \$4,750,000 is very advantageous for the Plaintiffs. *Id.*

4 Moreover, the distribution of the global settlement amount among the
 5 individual plaintiffs is also reasonable, and reflects what a jury may have awarded
 6 each plaintiffs, based on their claims and corresponding entitlement to either
 7 wrongful death or survival damages. Plaintiff Patricia Ruiz is receiving
 8 approximately 26% of the global settlement amount, and the minor Plaintiffs, A.J.P.
 9 and A.M.P. share equally 74% of the global settlement amount. *Id.* at ¶ 11.

10 Plaintiff Patricia Ruiz, as the decedent's mother, has claims for 1) interference
 11 with her familial relationship with her son, Mr. Perez, under the Fourteenth
 12 Amendment and sought wrongful death damages under that claim; 2) Battery under
 13 state law, and sought wrongful death damages under that claim; and 3) Negligence
 14 under state law, and sought wrongful death damages under that claim. (Dkt. No. 36,
 15 Second Amended Complaint ("SAC"); and Dkt. No. 45, Plaintiffs' Opposition to
 16 Defendants' Motion for Summary Judgment). At the time of his death Mr. Perez
 17 lived with Plaintiff Patricia Ruiz and she relied to some extent on his financial
 18 support for the necessities of life. (Galipo Decl. at ¶ 12; See also SAC, Dkt. No. 36).

19 If the case proceeded to trial, and if the jury were instructed on the model jury
 20 instructions for both Excessive Use of Force under the Fourth Amendment (Ninth
 21 Cir. Jury Instruction No. 9.25), and Battery by a Police Officer (CACI 1305(b)), a
 22 jury could find that Defendants' use of force both violated the Fourth Amendment
 23 and constituted battery. A jury could have therefore find that Ms. Ruiz could recover
 24 sizeable wrongful death damages for Defendants' excessive use of force through her
 25 claim for battery, given that she does not have standing to assert a claim under the
 26 Fourth Amendment. Galipo Decl. at ¶ 12. Additionally, a jury could have
 27 reasonably awarded Ms. Ruiz a high amount of non-economic wrongful death
 28 damages for the loss of Mr. Perez's love, companionship, comfort, care, assistance,

1 protection, affection, society, and moral support, as outlined in CACI 3921 and
2 3905. Galipo Decl. at ¶ 12. For these reasons, disbursement of the global settlement
3 of \$1,250,000 to Plaintiff Patricia Ruiz is fair, appropriate, and reflects what a
4 reasonable jury could have awarded her. *Id.*

5 Additionally, the disbursement to the minor plaintiffs is also reflective of their
6 claims in the case and corresponding sought damages. Plaintiffs A.J.P. and A.M.P.
7 have claims for the following: 1) Unreasonable Search and Seizure for excessive
8 force under the Fourth Amendment, seeking survival damages; 2) Interference with
9 their Familial Relationship with their father, under the Fourteenth Amendment,
10 seeking wrongful death damages; 3) Battery under state law, seeking survival
11 damages and wrongful death damages; 4) Negligence under state law, seeking
12 survival damages and wrongful death damages; 5) Violation of the Bane Act
13 (California Civil Code, Section 52.1), seeking survival damages. (Dkt. No. X, SAC).

14 It is also reasonable, based on the facts of this case and their survival claims,
15 that a jury could have awarded Plaintiffs A.J.P. and A.M.P. higher damages than
16 Plaintiff Patricia Ruiz, as is reflected in the disbursement of the global settlement
17 agreement. The gross disbursement to minors A.J.P. and A.M.P. of \$1,750,000,
18 each, reflects their claims above, as well as the fact that Mr. Perez did not live with
19 them at the time of his death, nor in the years prior. Nevertheless, Mr. Perez did
20 maintain a present, positive, and consistent relationship with them both, taking them
21 fishing and on camping trips. A jury could reasonably award a sizeable amount of
22 survival and wrongful death damages to both A.J.P. and A.M.P. for the loss of their
23 father, as individuals, and for their father's loss of life, as his successors-in-interest.
24 Galipo Decl. at ¶ 13. Therefore, the gross distribution of the global settlement to
25 each of the Plaintiffs, including the Minor Plaintiffs is fair and reasonable.

26 California Code of Civil Procedure Section 372 and California Rules of
27 Court, rule 3.1384 refer to the requirement of court approval and incorporate other
28 rules requiring disclosure of various pertinent facts. California Rule of Court, rule

1 3.1384 provides that “[a] petition for court approval of a compromise or covenant
2 not to sue under Code of Civil Procedure Section 372 must comply with rules 7.950,
3 7.951, and 7.952.”

4 Pursuant to the above California rules, the Minor Plaintiffs and their attorneys
5 make the following disclosures:

6 1. The Petitioner is Cynthia Nunez, guardian *ad litem* for minor plaintiffs
7 A.M.P. and A.J.P. Plaintiffs A.M.P. and A.J.P. are represented by the Law Offices
8 of Dale K. Galipo.

9 2. Plaintiff A.J.P. is female. She was born in 2013. Plaintiff A.J.P. is the
10 biological daughter of the decedent in this case, Albert Perez.

11 3. Plaintiff A.M.P. is a female. She was born in 2009. Plaintiff A.M.P. is
12 the biological daughter of the decedent in this case, Albert Perez.

13 4. The nature of the Minor Plaintiffs’ claims in this lawsuit is set forth in
14 the operative complaint filed in this action. The parties conditionally settled the
15 case in its entirety on March 27, 2024 for \$4,750,000. Leap Decl. at ¶ 6. The
16 settlement was approved by the relevant Boards of Approval on May 21, 2024. Leap
17 Decl. at ¶ 6.

18 5. The Minor Plaintiffs’ damages in this case arise from (1) the injuries
19 suffered by the decedent, for which the Minor Plaintiffs can recover survival
20 damages as successors in interest; and (2) Minor Plaintiffs’ individual loss of the
21 decedent’s comfort, care, companionship, training, support, and guidance (wrongful
22 death damages). Leap Decl. at ¶ 7.

23 6. Medical treatment and medical billing are not relevant. Plaintiffs
24 A.M.P. and A.J.P.’s have not received medical treatment in connection with this
25 case.

26 7. The total amount of the settlement that Defendants agree to pay is
27 \$4,750,000. Of the \$4,750,000 gross settlement amount, \$1,750,000 is proposed to
28 be distributed to A.J.P. and her attorneys, \$1,750,000 is proposed to be distributed to

1 A.M.P. and her attorneys, and \$1,250,000 is proposed to be distributed to Patricia
2 Ruiz and her attorneys. Plaintiffs' attorneys are requesting attorneys' fees in the
3 amount of 40 percent of the \$4,750,000 gross settlement proceeds. The attorneys'
4 fees will be disbursed to the Law Offices of Dale K. Galipo. Leap Decl. at ¶ 8.

5 The contingency retainer agreements between Plaintiffs and their attorneys
6 provide for a 40 percent contingency fee. The attorneys' fees will be split between
7 Plaintiffs on a pro rata basis with their gross settlement allocation, such that
8 Plaintiffs' attorneys are requesting \$700,000 in attorneys' fees from the gross
9 settlement proceeds allocated to A.J.P.; \$700,000 in attorneys' fees from the gross
10 settlement proceeds allocated to A.M.P.; and \$500,000 in attorneys' fees from the
11 gross settlement proceeds allocated to Patricia Ruiz. Leap Decl. at ¶ 8.

12 8. Plaintiffs' attorneys are also requesting reimbursement of advanced
13 litigation costs in the amount of \$50,416.03, which will be borne by the Plaintiffs on
14 a pro rata basis with their gross settlement allocation. Therefore, plaintiffs' attorneys
15 are requesting \$18,653.93 in costs from A.J.P.'s portion of the funds, \$18,653.93
16 from A.M.P.'s portion of the funds, and \$13,108.17 from Ms. Ruiz. In addition to
17 these pro rata shares of the costs, Leap Decl. at ¶ 9-10.

18 9. Under the existing retainer agreements, Plaintiffs' attorneys are due a
19 40 percent attorney recovery fee, plus reimbursement of advanced litigation costs.
20 The contingency attorney fee award in this case is clearly justified, including by: the
21 \$4,750,000 settlement; attorney Dale K. Galipo's skill and experience in the civil
22 rights field; the difficulties and complexities of this case; the risk assumed by
23 Plaintiffs' counsel; and the time and expense of litigating this matter and opposing
24 Defendants' motion for summary judgment. Plaintiffs litigated this case for two
25 years, from case initiation and filing, through fact and expert discovery, opposing
26 Defendants' motion for summary judgment, and completely preparing the case to go
27 to trial in July 2024, until the parties reached a settlement. Plaintiffs' attorneys,
28 including attorney Shannon J. Leap, devoted significant time to this case in order to

1 achieve the settlement, including but not limited to: (1) reviewing and analyzing
 2 hours of audio belt recording footage, numerous interview transcripts, and
 3 voluminous reports; (2) conducting expert discovery, including depositions; (3)
 4 conducting and defending many fact witness depositions; (4) opposing Defendants’
 5 motion for summary judgment. Leap Decl. at ¶ 11. Plaintiffs’ original attorney on
 6 this case, Mr. Jorge Gonzalez, unexpectedly passed away in March of 2022. Mr.
 7 Gonzalez was also an experienced civil rights attorney, as well as Mr. Galipo’s
 8 friend and colleague. Mr. Gonzalez’s office, by way of his widow, referred the case
 9 to the Law Offices of Dale K. Galipo, entrusting Mr. Galipo and his firm to work
 10 the case up and achieve a successful result for Plaintiffs. There was no settlement
 11 offer until the mediation, which was after all of the work up on the case, including
 12 expert discovery and opposing defendants’ motion for summary judgement. Leap
 13 Decl. at ¶ 11.

14 The contingency attorney fee award in this case is justified by attorney Dale
 15 K. Galipo’s skill and experience in the civil rights field, the difficulties and
 16 complexities of this case, and the risk assumed by Plaintiffs’ counsel in this difficult
 17 case. Mr. Galipo is one of the most successful and experienced civil rights attorneys
 18 in the country. Mr. Galipo has been elected as a “Super Lawyer” every year since
 19 the year 2013. In 2019, Mr. Galipo was selected to the Inner Circle of Advocates,
 20 considered to represent the top one hundred civil plaintiff’s attorneys in the United
 21 States. Also in 2019, Mr. Galipo was elected as a Fellow of the American College of
 22 Trial Lawyers, which is recognized as the preeminent organization of trial lawyers
 23 in North America. In 2020, Mr. Galipo received the “Trial Lawyer of the Year”
 24 award from the Consumer Attorneys Association of Los Angeles (“CAALA”). Also
 25 in 2020, Mr. Galipo received the “2020 Consumer Attorney of the Year” award
 26 from the Consumer Attorneys of California (“CAOC”). Leap Decl. at ¶ 11.

27 Some of Mr. Galipo’s recent notable verdicts include the following:
 28 \$13,500,000 verdict in the restraint death case *Zelaya v. City of Los Angeles*, tried in

1 federal court before the Honorable Otis Wright, II in October 2023; \$23,800,000
2 verdict in the police shooting case *Murillo v. City of Los Angeles*, tried in federal
3 court before the Honorable Fernando M. Olguin in August 2023; \$10,000,000
4 verdict in the case *Najera v. County of Riverside*, tried in federal court in April
5 2023; \$17,002,000 verdict in the case *French v. City of Los Angeles*, tried in
6 October 2021 before the Honorable Jesus G. Bernal; \$13,200,000 verdict in the
7 police in-custody death case *Valenzuela v. City of Anaheim*, tried in November 2019
8 before the Honorable Cormac J. Carney. Leap Decl. at ¶ 11.

9 Mr. Galipo has recently been awarded statutory attorney fee rates over \$1,000
10 an hour and up to \$1,400 an hour by multiple federal courts. In *Najera-Aguirre v.*
11 *County of Riverside*, tried in federal court in April of 2023 in front of the Honorable
12 Dolly M. Gee, Judge Gee awarded Mr. Galipo an hourly rate of \$1,250. In *Zelaya v.*
13 *City of Los Angeles*, tried in federal court in October of 2023 in front of the
14 Honorable Otis D. Wright III, Judge Wright awarded Mr. Galipo an hourly rate of
15 \$1,300. In *French v. City of Los Angeles*, Judge Bernal awarded Mr. Galipo \$1,100
16 per hour for his work in that case at the district court level. In the same case, after
17 the plaintiffs prevailed against the City's appeal, Judge Bernal awarded Mr. Galipo
18 \$1,400 per hour for attorney fees on appeal, in an order dated February 21, 2024.
19 Mr. Galipo's hourly rates as awarded by these federal judges supports Plaintiffs'
20 attorneys' request for the full 40% contingency attorney fee in this case. Leap Decl.
21 at ¶ 11.

22 Additionally, this case involved a substantial amount of risk. If Plaintiffs'
23 attorneys were not awarded a significant compensatory fee in difficult civil rights
24 cases of public importance, then attorneys would not be able to take such cases. In
25 turn, plaintiffs such as A.M.P. and A.J.P. would not be able to attract competent
26 counsel who could achieve similar results and achieve justice for victims of police
27 brutality. Accordingly, Plaintiffs and their attorneys submit that they are deserving
28 of the requested 40 percent contingency attorney recovery fee in this case with

1 respect to A.M.P. and A.J.P.'s portions of the settlement. Leap Decl. at ¶ 12.

2 10. As stated above, the gross amount of the settlement is \$4,750,000.

3 After deducting requested contingency attorneys' fees of \$700,000 and costs in the
4 amount of \$18,653.93, the total net settlement proceeds to A.J.P. is \$1,031,346.07.

5 After deducting requested contingency attorneys' fees of \$700,000 and costs in the
6 amount of \$18,653.93, the total net settlement proceeds to A.M.P. is \$1,031,346.07.

7 The share of the settlement proceeds apportioned for Plaintiff Ms. Ruiz and her
8 attorneys is \$1,250,000. After deducting requested attorneys' fees of \$500,000 and
9 costs in the amount of \$13,108.17, the total net settlement to Patricia Ruiz is
10 \$735,891.83. Leap Decl. at ¶ 13.

11 11. It is requested that \$1,031,346.07 be used to fund a structured
12 settlement annuity for Plaintiff A.M.P. Attached as "Exhibit A" to the Declaration
13 of Shannon J. Leap is the proposed structured settlement annuity and disbursement
14 schedule for A.M.P. Under the proposal set forth in "Exhibit A," the total amount
15 that Plaintiff A.M.P. shall receive directly after the final payment is made to her is
16 \$1,817,225.08. Leap Decl. at ¶ 13. A.M.P.'s guardian *ad litem*, Petitioner Cynthia
17 Nunez, has reviewed the proposed annuity and disbursement schedule for A.M.P.
18 set forth in "Exhibit A" and believes it is in the best interest of A.M.P. Leap Decl.
19 at ¶ 13.

20 12. It is requested that \$1,031,346.07 be used to fund a structured
21 settlement annuity for Plaintiff A.J.P. Included in "Exhibit A" attached to the
22 Declaration of Shannon J. Leap is the proposed structured settlement annuity and
23 disbursement schedule for A.J.P. Under the proposal set forth in "Exhibit A," the
24 total amount that Plaintiff A.J.P. shall receive directly after the final payment is
25 made to her is \$2,379,537.12. Leap Decl. at ¶ 13. A.J.P.'s guardian *ad litem*,
26 Petitioner Cynthia Nunez, has reviewed the proposed annuity and disbursement
27 schedule for A.J.P. set forth in "Exhibit A" and believes it is in the best interest of
28 A.J.P. Leap Decl. at ¶ 13.

1 13. The interest rates secured for these annuities expire on September 10,
2 2024. Additionally, it can take up to 21 days for the County to purchase the
3 annuities following the Court issuing an order. For that reason, filing this
4 Application as a regularly noticed motion may cause a decrease in payment benefits
5 to the minor plaintiffs because the secured interest rates may expire in the time it
6 takes for an order to be issued, and for the County to subsequently purchase the
7 annuities. Leap Decl. at ¶ 4.

8 14. The moving guardian *ad litem* Cynthia Nunez has no claims against
9 Defendants in connection with the subject incident.

10 15. The moving guardian *ad litem* Cynthia Nunez does not have any claims
11 against Plaintiffs A.J.P. or A.M.P. in connection with the subject incident.

12 16. California Welfare and Institutions Code Section 14124.73 does not
13 apply.

14 17. This motion does not seek an order for payment of money to a special
15 needs trust. Leap Decl. at ¶ 14.

16 Disclosures pursuant to California Rule of Court 7.951

17 1. This petition was prepared by attorney Shannon J. Leap (California
18 State Bar Number 339574), of the Law Offices of Dale K. Galipo, located at 21800
19 Burbank Boulevard, Suite 310, Woodland Hills, California, which represents
20 Plaintiffs A.J.P. and A.M.P. in this action. Leap Decl. at ¶ 15.

21 2. Plaintiffs A.J.P. and A.M.P.'s attorneys did not become concerned with
22 this matter at the instance of any party against whom the claim of said minor is
23 asserted. Leap Decl. at ¶ 16.

24 3. Plaintiffs A.J.P. and A.M.P.'s attorneys are not employed by any other
25 party, or any insurance carrier involved in the matter, except by Plaintiff Patricia
26 Ruiz. Leap Decl. at ¶ 17.

27 4. Plaintiffs A.J.P. and A.M.P.'s attorneys have not to date received any
28 compensation for their services in connection herewith from any person. Leap Decl.

1 at ¶ 18.

2 5. Plaintiffs A.J.P. and A.M., and Patricia Ruiz are the only Plaintiffs in
3 the above-referenced action. Plaintiffs' attorneys, including the Law Offices of
4 Dale K. Galipo, expect to receive \$1,900,000 in contingency attorneys' fees as set
5 forth above. Leap Decl. at ¶ 19.

6 6. Plaintiffs' attorneys accepted this engagement for a contingency fee,
7 plus reimbursement for any costs advanced. The retainer agreements with all
8 plaintiffs provide for a 40 percent contingency attorney fee on any recovery
9 Plaintiffs make on their case by way of verdict or settlement. Leap Decl. at ¶ 20.

10 Petitioner's Endorsement

11 Petitioner has made a careful and diligent inquiry and investigation to
12 ascertain the facts relating to the incident giving rise to Plaintiffs A.M.P. and
13 A.J.P.'s claims, the parties responsible for the incident, and the nature, extent and
14 seriousness of the Plaintiffs A.M.P. and A.J.P.'s claims. Petitioner further
15 understands that if the compromise proposed in this petition is approved by the
16 Court and is consummated, Plaintiffs A.M.P. and A.J.P.'s will be forever barred
17 from seeking any further recovery of compensation even though Plaintiffs A.M.P.
18 and A.J.P.'s injuries and losses might in the future appear to be more serious than
19 they are now thought to be. Petitioner Ms. Nunez is informed and believes that
20 Plaintiffs A.M.P. and A.J.P. has made sufficient recovery from the effects of their
21 injuries and losses so as to justify the resolution of this matter in accordance with
22 the terms of the settlement agreement. Petitioner recommends the compromise and
23 the proposed distribution to Plaintiffs A.M.P. and A.J.P. to the Court as being fair,
24 reasonable, and in the best interest of Plaintiffs A.M.P. and A.J.P. and requests that
25 the Court approve this compromise settlement and make such other and further
26 orders as may be just and reasonable. Accordingly, Petitioner Cynthia Nunez,
27 guardian *ad litem* for minor Plaintiffs A.M.P. and A.J.P., requests that this
28 Honorable Court enter the proposed annuity attached to the Leap Decl. as "Exhibit

1 A” for Plaintiffs A.M.P. and A.J.P.

2 **III. CONCLUSION**

3 For the reasons above, Petitioner Cynthia Nunez and Plaintiffs A.M.P. and
4 A.J.P., through their guardian *ad litem*, respectfully submit that this Court should
5 enter the proposed order and “Exhibit A” and “Exhibit B” submitted concurrently
6 herewith.

7
8 Respectfully submitted,

9
10 DATED: July 18, 2024

LAW OFFICES OF DALE K. GALIPO

11
12 /s/ Shannon J. Leap

13 Dale K. Galipo

14 Shannon J. Leap

15 *Attorneys for Plaintiffs*
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